

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)

IP-Enabled Services)

WC Docket No. 04-36)

FCC 09-40

REPORT AND ORDER**Adopted: May 13, 2009****Released: May 13, 2009**

By the Commission: Acting Chairman Copps and Commissioners Adelstein and McDowell issuing
separate statements.

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I. INTRODUCTION

1. Today's telecommunications marketplace is one of rapidly changing technology, capability, and services. Since the Commission first described Internet Protocol (IP)-enabled services over five years ago, the American public has embraced them, resulting in the widespread adoption of mass market interconnected Voice over Internet Protocol (VoIP) and broadband services by millions of consumers for voice, video, and Internet communications. The rapid growth and ubiquity of these services raise important consumer protection issues for millions of Americans.

2. Consumers increasingly use interconnected VoIP service as a replacement for traditional voice service, and as interconnected VoIP service improves and proliferates, consumers' expectations for

this type of service trend toward their expectations for other telephone services.¹ Thus, in this Report and Order (Order), we take steps to protect consumers of interconnected VoIP service from the abrupt discontinuance, reduction, or impairment of their service without notice.² Specifically, we extend to providers of interconnected VoIP service the discontinuance obligations that apply to domestic non-dominant telecommunications carriers under section 214 of the Communications Act of 1934, as amended (the Act). Consequently, before an interconnected VoIP provider may discontinue service, it must comply with the streamlined discontinuance requirements under Part 63 of the Commission's rules, including the requirements to provide written notice to all affected customers, notify relevant state authorities, and file an application for authorization of the planned discontinuance with the Commission.

3. It is important to note that we do not impose any economic regulation on providers of interconnected VoIP service by our actions today. Title II and the Commission's rules subject all common carriers to a variety of *non-economic* regulations designed to further important public policy goals and protect consumers,³ and the Commission has stated previously that it "will not hesitate to adopt any non-economic regulatory obligations that are necessary to ensure consumer protection and network security and reliability in this dynamically changing broadband era."⁴ Included among these are the

¹ See, e.g., U.S. VoIP Research Service, TeleGeography Research, at 2 (noting that the United States had 11.8 million VoIP subscribers in mid-2007), available at http://www.telegeography.com/products/voip/pdf/USVoIP_Exec_Summ.pdf (last visited May 13, 2009); JR, *US has overtaken Japan in retail VoIP subscriber numbers*, available at http://www.ilocus.com/2008/03/us_has_overtaken_japan_in_reta.html (last visited May 13, 2009) (noting that the United States had 16.1 million retail VoIP subscribers as of the fourth quarter of 2007).

² The Commission's rules define "interconnected VoIP service" as "a service that: (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol-compatible customer premises equipment (CPE); and (4) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network." 47 C.F.R. § 9.3; see also *IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36, 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, 10257-58, para. 24 (2005) (*VoIP 911 Order*), *aff'd*, *Nuvio Corp. v. FCC*, 473 F.3d 302 (D.C. Cir. 2006); 47 C.F.R. § 54.5 (defining "interconnected VoIP provider").

³ *Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) from Application of Computer Inquiry Rules and Certain Title II Common-Carriage Requirements*, *Petition of the Frontier and Citizens ILECs for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services*, WC Docket No. 06-147, Memorandum Opinion and Order, 22 FCC Rcd 19478, 19481, para. 5 (2007) (*Embarq and Frontier/Citizens Enterprise Broadband Forbearance Order*) (emphasis added), *pet. for review pending*, No. 07-1442 (D.C. Cir. filed Nov. 5, 2007).

⁴ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers; Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review—Review of Computer III and ONA Safeguards and Requirements; Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) with Regard to Broadband Services Provided via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided via Fiber to the Premises; Consumer Protection in the Broadband Era*, WC Docket No. 04-242, 05-271, CC Docket Nos. 95-20, 98-10, 01-337, 02-33, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14915, para. 111 (2005) (*WBIAS Order or Broadband Consumer Protection NPRM*), *petitions for review denied*, *Time Warner Telecom, Inc. v. FCC*, 507 F.3d 205 (3d Cir. 2007).

obligations we impose today on providers of interconnected VoIP service, which serve as important consumer protection measures.⁵

II. BACKGROUND

A. IP-Enabled Services Rulemaking

4. On March 10, 2004, the Commission initiated a rulemaking proceeding to examine issues relating to IP-enabled services – services and applications making use of IP, including, but not limited to, VoIP services.⁶ In the *IP-Enabled Services Notice*, the Commission sought comment on numerous issues, including whether to extend certain consumer protection obligations, such as the discontinuance obligations of section 214, to any class of IP-enabled service provider.⁷

5. The Commission has resolved many of the issues raised in the *IP-Enabled Services Notice*. Most relevant here, the Commission has extended a number of consumer protection and public safety requirements to interconnected VoIP service. For example, in 2005, the Commission asserted its ancillary jurisdiction under Title I of the Act, and its authority under section 251(e), to require interconnected VoIP providers to supply 911 emergency calling capabilities to their customers.⁸ In 2006, in the *2006 Interim Contribution Methodology Order*, the Commission established universal service contribution obligations for interconnected VoIP providers based on the permissive authority of section 254(d) and its ancillary jurisdiction under Title I of the Act.⁹ In 2007, the Commission extended the customer privacy requirements of section 222 to interconnected VoIP providers using Title I authority.¹⁰ Also in 2007, the Commission used its Title I authority to extend the section 255 disability access obligations to providers of interconnected VoIP services and to manufacturers of specially designed equipment used to provide these services.¹¹ The Commission also extended the Telecommunications Relay Services (TRS) requirements to providers of interconnected VoIP services, pursuant to section 225(b)(1) of the Act and its Title I jurisdiction, thus requiring interconnected VoIP providers to contribute to the Interstate TRS Fund under the Commission's existing contribution rules, and to offer 711

⁵ Compare, e.g., *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, 4910, para. 72 (2004) (*IP-Enabled Services Notice*) (seeking comment on a number of consumer protections set forth in the Act, including section 214 separately) with *id.* at 4911-12, para. 73 (seeking comment on whether various traditional *economic* regulations set forth in Title II should be applied to any class of IP-enabled service provider).

⁶ See *IP-Enabled Services Notice*, 19 FCC Rcd 4863.

⁷ *IP-Enabled Services Notice*, 19 FCC Rcd at 4910-11, paras. 71-72.

⁸ See *VoIP 911 Order*, 20 FCC Rcd at 10246, para. 1.

⁹ See *Universal Service Contribution Methodology*, WC Docket No. 06-122; CC Docket Nos. 96-45, 98-171, 90-571, 92-237; NSD File No. L-00-72; CC Docket Nos. 99-200, 95-116, 98-170; WC Docket No. 04-36, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7538-43, paras. 38-49 (2006) (*2006 Interim Contribution Methodology Order*), *aff'd in part, vacated in part sub nom. Vonage Holdings Corp. v. FCC*, 489 F.3d 1232, 1244 (D.C. Cir. 2007).

¹⁰ See *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, CC Docket No. 96-115, WC Docket No. 04-36, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927, 6954-57, paras. 54-59 (2007) (*CPNI Order*), *pet. for review pending sub nom. National Cable & Telecomms. Ass'n v. FCC* (D.C. Cir. No. 07-1312).

¹¹ See *IP-Enabled Services*, WC Docket No. 04-36, WT Docket No. 96-198, CG Docket No. 03-123, CC Docket No. 92-105, Report and Order, 22 FCC Rcd 11275, 11283-291, paras. 17-31 (2007) (*TRS Order*).

abbreviated dialing for access to relay services.¹² Additionally in 2007, the Commission extended local number portability (LNP) obligations and numbering administration support obligations to interconnected VoIP providers and their numbering partners pursuant to sections 251(e) and 251(b)(2) of the Act and Title I authority.¹³

B. Section 214 Discontinuance Requirements

6. Section 214(a) of the Act requires common carriers to obtain Commission authorization before discontinuing, reducing, or impairing service to a community.¹⁴ Under Part 63 of its rules, the Commission has adopted specific requirements that clarify this duty and ensure that customers of domestic telecommunications services receive adequate notice of a carrier's discontinuance plans and have an opportunity to inform the Commission of any resultant hardships.¹⁵ In particular, before discontinuing service, a telecommunications carrier generally must notify all affected customers of its proposed discontinuances. Notice to customers must include the name and address of the carrier, the date of the planned service discontinuance, the geographic areas where service will be discontinued, and a brief description of the type of service affected. In addition, notice must include a prescribed statement that informs customers of their right to object to the proposed discontinuance of the dominant or non-dominant carrier by filing comments either 30 or 15 days, respectively, after the Commission releases public notice of the proposed discontinuance.¹⁶ The prescribed statement also informs customers that the Commission normally will authorize the proposed discontinuance "unless it is shown that customers

¹² See *id.* at 11291-97, paras. 32-43. TRS, created by Title IV of the Americans with Disabilities Act of 1990 (ADA), enables a person with a hearing or speech disability to access the nation's telephone system to communicate with voice telephone users through a relay provider and a Communications Assistant. See 47 U.S.C. § 225(a)(3); see also 47 C.F.R. § 64.601(14) (defining TRS).

¹³ See *Telephone Number Requirements for IP-Enabled Services Providers; Local Number Portability Porting Interval and Validation Requirements; IP-Enabled Services; Telephone Number Portability; Numbering Resource Optimization*, WC Docket Nos. 07-243, 07-244, 04-36, CC Docket Nos. 95-116, 99-200, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531 (2007) (*VoIP LNP Order*), *pet. for review pending sub nom. National Telecomms. Cooperative Ass'n v. FCC* (D.C. Cir. No. 08-1071). In addition, in 2005 the Commission determined that providers of interconnected VoIP services and broadband Internet access services are subject to the Communications Assistance for Law Enforcement Act (CALEA). See *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, RM-10865, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 14989, 14991-92, para. 8 (2005) (*CALEA First Report and Order*), *aff'd sub nom. American Council on Educ. v. FCC*, 451 F.3d 226 (D.C. Cir. 2006). In addition, starting in fiscal year 2007, the Commission, under its Title I ancillary jurisdiction, has required interconnected VoIP providers to pay regulatory fees based on revenues reported on the FCC Form 499-A at the same rate as interstate telecommunications service providers. See *Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, MD Docket No. 07-81, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15712, 15716-17, paras. 11-13 (2007).

¹⁴ 47 U.S.C. § 214(a).

¹⁵ See 47 C.F.R. §§ 63.60 *et seq.*; see also *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, First Report and Order, 85 FCC 2d 1 (1980) (*Competitive Carrier First Report and Order*); *Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996, Petition for Forbearance of the Independent Telephone & Telecommunications Alliance*, CC Docket No. 97-11, AAD File No. 98-43, Report and Order in CC Docket No. 97-11, Second Memorandum Opinion and Order in AAD File No. 98-43, 14 FCC Rcd 11364 (1999); *Biennial Regulatory Review of Regulations Administered by the Wireline Competition Bureau*, WC Docket No. 02-313, 21 FCC Rcd 9937 (2006). The Commission also has adopted requirements for the discontinuance of international telecommunications services. See 47 C.F.R. §§ 63.09 *et seq.* The scope of the present order is limited to the Commission's domestic service rules.

¹⁶ 47 C.F.R. § 63.71(a).

would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected.”¹⁷

7. After a carrier has given the prescribed notice to all of its affected customers, it must submit a discontinuance application to the Commission.¹⁸ In addition to the information provided in the notice to affected customers, each application must contain: (1) a brief description of the dates and methods of notice to all affected customers; (2) a statement as to whether the carrier is considered dominant or non-dominant with respect to the service to be discontinued, reduced, or impaired; and (3) any other information the Commission may require.¹⁹ Carriers also must notify and submit a copy of the discontinuance application to the public utility commission and Governor of each state in which the discontinuance is proposed, and also to the Secretary of Defense. Unless the Commission notifies the carrier otherwise, discontinuance applications for dominant and non-dominant carriers will be automatically granted by the Commission on the 60th and 31st day after public notice of the application, respectively.²⁰

III. DISCUSSION

A. Scope

8. The exit certification requirements we adopt in this Order apply to interconnected VoIP service and providers of such service.²¹ As the Commission has found before, unlike certain other IP-

¹⁷ See *id.*

¹⁸ See 47 C.F.R. § 63.71(b).

¹⁹ See *id.*

²⁰ 47 C.F.R. § 63.71(c).

²¹ “Interconnected VoIP service” and “interconnected VoIP provider” are defined *supra* at note 2. The Commission to date has not classified interconnected VoIP service as a telecommunications service or information service as those terms are defined in the Act, and we do not make that determination today. See 47 U.S.C. § 153(20), (46) (defining “information service” and “telecommunications service”). In general, providers of facilities-based interconnected VoIP services and “over-the-top” interconnected VoIP services are subject to the rules in this Order. See *AT&T Inc. and BellSouth Corporation, Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5712, para. 92 n.266 (2007) (defining “facilities-based” and “over-the-top” interconnected VoIP service providers). We do not at this time, however, extend section 214 requirements to providers of interconnected VoIP services that are “mobile services” under the Act. See 47 U.S.C. § 3(27); 47 C.F.R. § 20.3. If anything, these services would be more akin to Commercial Mobile Radio Service (CMRS) than to traditional wireline services. Therefore, for purposes of the rules at issue here, we believe it makes more sense to treat providers of interconnected VoIP services that are mobile the same way that we treat CMRS providers, which are not subject to the Commission’s section 214 discontinuance obligations. See 47 C.F.R. § 20.15(b)(3); *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1480-81, para. 182 (1994) (forbearing under section 332(c)(1)(A) from requiring CMRS providers to comply with the domestic market entry and market exit requirements of section 214). The Commission may revisit this issue if circumstances warrant, and in other contexts may decline to exempt these services from rules that apply to interconnected VoIP services generally. See, e.g., *IF-Enabled Services; Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, WC Docket No. 04-36, WT Docket No. 96-198, CG Docket No. 03-123 & CC Docket No. 92-105, Order, 23 FCC Rcd 5707, 5715, para. 13 n.47 (CGB Apr. 4, 2008) (2008 TRS 711 Waiver Order) (declining to grant “wireless interconnected VoIP services” a one-year extension of the deadline for complying with the Commission’s TRS rules).

enabled services, interconnected VoIP service increasingly is used as a replacement for traditional voice service.²² Indeed, as interconnected VoIP service improves and proliferates, consumers' expectations for this type of service trend toward their expectations for other telephone services. Customers therefore reasonably expect their interconnected VoIP service to include the regulatory protections that they would receive with traditional voice services.²³ We believe it is critically important that all customers of interconnected VoIP service receive the protections of the section 214 discontinuance requirements.²⁴ Importantly, if customers were to lose their telephone service without sufficient notice, they would also lose access to 911 service – possibly with disastrous consequences. Our action today therefore is consistent with, and a necessary extension of, the Commission's prior exercises of authority to ensure public safety.

B. Section 214 Discontinuance

9. *Authority.* We conclude that the Commission has authority under Title I of the Act to impose section 214 discontinuance obligations on providers of interconnected VoIP services.²⁵ Ancillary jurisdiction may be employed, at the Commission's discretion, when Title I of the Act gives the Commission subject matter jurisdiction over the service to be regulated²⁶ and the assertion of jurisdiction

²² See *VoIP LNP Order*, 22 FCC Rcd at 19540-41, para. 18; see also *CPNI Order*, 22 FCC Rcd at 6956, para. 56; *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7541, para. 44; *VoIP 911 Order*, 20 FCC Rcd at 10256, para. 23.

²³ See, e.g., *VoIP 911 Order*, 20 FCC Rcd at 10256, para. 23 (explaining that if a VoIP customer is able to make calls to and receive calls from other interconnected VoIP service users and traditional telephone service subscribers, interconnected VoIP customers reasonably can expect to be able to dial 911 using the same service to access appropriate emergency services); *CPNI Order*, 22 FCC Rcd at 6956, para. 56 (finding it is "reasonable for American consumers to expect that their telephone calls are private irrespective of whether the call is made using the services of a wireline carrier, a wireless carrier, or an interconnected VoIP provider"); *VoIP LNP Order*, 22 FCC Rcd at 19540-41, para. 18 (similar).

²⁴ We clarify that we extend the Commission's section 214 discontinuance rules to all interconnected VoIP providers, and not simply those that own or control their own facilities. See, e.g., *supra* note 21. All telephone service customers deserve notice before their service is discontinued, and we reject arguments for a limited application of section 214 discontinuance requirements, such as only to entities that own or control the facilities used to provide interconnected VoIP service. See Covad Comments at 31; Pac-West Comments at 26, 28. All comments in this Order are in WC Docket No. 04-36 unless otherwise noted.

²⁵ See 47 U.S.C. §§ 151, 152.

²⁶ See *United States v. Southwestern Cable Co.*, 392 U.S. 157, 177-78 (1968) (*Southwestern Cable*). *Southwestern Cable*, the lead case on the ancillary jurisdiction doctrine, upheld certain regulations applied to cable television systems at a time before the Commission had an express congressional grant of regulatory authority over that medium. See *id.* at 170-71. In *Midwest Video I*, the Supreme Court expanded upon its holding in *Southwestern Cable*. The plurality stated that "the critical question in this case is whether the Commission has reasonably determined that its origination rule will 'further the achievement of long-established regulatory goals in the field of television broadcasting by increasing the number of outlets for community self-expression and augmenting the public's choice of programs and types of services.'" *United States v. Midwest Video Corp.*, 406 U.S. 649, 667-68 (1972) (*Midwest Video I*) (quoting *Amendment of Part 74, Subpart K, of the Commission's Rules and Regulations Relative to Community Antenna Television Systems; and Inquiry into the Development of Communications Technology and Services to Formulate Regulatory Policy and Rulemaking and/or Legislative Proposals*, Docket No. 18397, First Report and Order, 20 FCC 2d 201, 202 (1969) (*CATV First Report and Order*)). The Court later restricted the scope of *Midwest Video I* by finding that if the basis for jurisdiction over cable is that the authority is ancillary to the regulation of broadcasting, the cable regulation cannot be antithetical to a basic regulatory parameter established for broadcast. See *FCC v. Midwest Video Corp.*, 440 U.S. 689, 700 (1979) (*Midwest Video II*); see also *American Library Ass'n v. FCC*, 406 F.3d 689 (D.C. Cir. 2005) (holding that the Commission lacked authority to impose broadcast content redistribution rules on equipment manufacturers using ancillary jurisdiction because the (continued....)

is “reasonably ancillary to the effective performance of [its] various responsibilities.”²⁷ Both predicates for ancillary jurisdiction are satisfied here.

10. First, as the Commission previously has concluded, interconnected VoIP service falls within the subject matter jurisdiction granted to the Commission under the Act.²⁸ Second, our analysis requires us to evaluate whether imposing service discontinuance obligations on interconnected VoIP providers is reasonably ancillary to the effective performance of the Commission’s responsibilities.²⁹ As discussed further below, we find that sections 1 and 214 of the Act provide the requisite nexus, with additional support from section 706.³⁰ Specifically, we find that extending the section 214 discontinuance procedures to interconnected VoIP service providers is “reasonably ancillary to the effective performance of [our] responsibilities”³¹ under these statutory provisions, and “will ‘further the achievement of long-established regulatory goals’”³² to ensure that the public is not adversely affected by the discontinuance, reduction, or impairment of service.³³

11. We find that extending the Commission’s domestic discontinuance requirements to interconnected VoIP providers is reasonably ancillary to the Commission’s effective performance of its responsibility to promote safety of life and property through the use of wire and radio communication.³⁴ Section 1 of the Act charges the Commission with responsibility for making available “a rapid, efficient, Nation-wide, and world-wide wire and radio communication service . . . for the purpose of *promoting safety of life and property* through the use of wire and radio communication.”³⁵ By extending the section 214 discontinuance procedures to interconnected VoIP providers, the Commission protects American consumers from the unanticipated and harmful consequences that could follow the loss of telephone

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equipment at issue was not subject to the Commission’s subject matter jurisdiction over wire and radio communications).

²⁷ *Southwestern Cable*, 392 U.S. at 178.

²⁸ See, e.g., *VoIP LNP Order*, 22 FCC Rcd at 19544-48, paras. 24-29; *EPIC CPNI Order*, 22 FCC Rcd at 6955-56, para. 55; *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7542, para. 47; *VoIP 911 Order*, 20 FCC Rcd at 10261-62, para. 28 (“[I]nterconnected VoIP services are covered by the statutory definitions of ‘wire communication’ and/or ‘radio communication’ because they involve ‘transmission of [voice] by aid of wire, cable, or other like connection . . .’ and/or ‘transmission by radio . . .’ of voice. Therefore, these services come within the scope of the Commission’s subject matter jurisdiction granted in section 2(a) of the Act.”).

²⁹ *Southwestern Cable*, 392 U.S. at 178.

³⁰ See also SBC Comments at 127; cf. TWTC Comments at 32-33.

³¹ *Southwestern Cable*, 392 U.S. at 178.

³² *Midwest Video I*, 406 U.S. at 667-68 (quoting *CATV First Report and Order*, 20 FCC 2d at 202).

³³ See 47 U.S.C. § 214; see also, e.g., *Competitive Carrier First Report and Order*, 85 FCC 2d at 28, para. 118 (“[S]ection 214 is a broad mandate delegated to the Commission by Congress to allow the development of the telecommunications industry in a way likely to achieve the purpose of the Act as specified in 47 U.S.C. § 151.”). We disagree with TWTC’s suggestion that application of our ancillary jurisdiction would not be advisable given the possible classification of interconnected VoIP service as something other than a telecommunications service. See TWTC Comments at 33-36. As explained above, the actions we take in this order are fully justified, regardless of the regulatory classification of interconnected VoIP service. See *supra* para. 8; *supra* note 21 (stating that the present order does not classify interconnected VoIP service as a telecommunications service or an information service).

³⁴ See SBC Comments at 126-127; see also 47 U.S.C. § 214.

³⁵ 47 U.S.C. § 151 (emphasis added).

service without sufficient notice.³⁶ Most notably, as mentioned above, if an interconnected VoIP provider discontinued service without notice, customers would lose the ability to call 911 through that service. In addition, extending the section 214 discontinuance rules to interconnected VoIP providers ensures customers' ability to transition to alternative service providers in an orderly fashion. The Commission thereby fosters "rapid, efficient, Nation-wide, and world-wide wire and radio communication service" by safeguarding the public interest in continuity of such services – irrespective of which provider makes those services available.³⁷

12. Section 214(a) of the Act states that "[n]o carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby."³⁸ The primary purpose of this requirement is to reduce the harm to consumers caused by discontinuances of service. We find that the extension of section 214 service discontinuance requirements to providers of interconnected VoIP service is reasonably ancillary to the effective performance of the Commission's duty to protect the public from the adverse effects of service discontinuances.³⁹ The Commission already has found that interconnected VoIP service "is increasingly used to replace analog voice service" – a trend that we expect will continue.⁴⁰ From the perspective of a customer making an ordinary telephone call, we believe that interconnected VoIP service is functionally indistinguishable from traditional telephone service. It therefore is reasonable for American consumers to have similar expectations for these services.⁴¹ In particular, we find it reasonable for customers of interconnected VoIP service to expect some advance notice before the discontinuance of their voice service, and note that customers receiving traditional telephone service from wireline carriers are already entitled to such notice under the Commission's discontinuance requirements. By extending the Commission's discontinuance requirements to interconnected VoIP services, we advance the public interest by helping ensure that such notice actually is given to customers that are making and receiving calls regardless of whether they are receiving service from a traditional carrier or an interconnected VoIP provider.

13. We also are guided by section 706 of the 1996 Act, which, among other things, directs the Commission to encourage the deployment of advanced telecommunications capability to all Americans by using measures that "promote competition in the local telecommunications market."⁴² The assurance that providers of interconnected VoIP services are subject to service-discontinuance procedures comparable to those that apply to non-dominant carriers may spur consumer demand for those services, in

³⁶ The House of Representatives found in 2007 that "more than 9 million consumers in the United States use VoIP service as a substitute for traditional telephony." See House Report, 110-442 110th Cong., 1st Sess. at 6 (2007) (summarizing legislation that gives interconnected VoIP providers increased access to the capabilities needed to provide 911 service).

³⁷ 47 U.S.C. § 151.

³⁸ 47 U.S.C. § 214(a); see also 47 U.S.C. § 214(c) (granting the Commission broad authority regarding section 214 certifications).

³⁹ The Supreme Court has determined that the Commission has considerable discretion in deciding how to make its section 214 public interest finding. See *Competitive Carrier First Report and Order*, 85 FCC 2d at 28, para. 119 (citing *FCC v. RCA Communications, Inc.*, 346 U.S. 86, 90 (1953)).

⁴⁰ See *supra* note 22.

⁴¹ See *supra* note 23.

⁴² 47 U.S.C. § 157 nt.

turn driving demand for broadband connections, and consequently encouraging more broadband investment and deployment consistent with the goals of section 706.⁴³

14. *Interconnected VoIP Provider Discontinuance Obligations.* To protect customers from an abrupt discontinuance, reduction, or impairment of service without adequate notice, we require providers of interconnected VoIP service to comply with the same service discontinuance obligations as domestic non-dominant carriers.⁴⁴ We disagree with commenters who assert that such action is unnecessary in light of competitive market conditions.⁴⁵ Service discontinuance can be disruptive to all customers, regardless of whether their provider has market power or utilizes new technology.⁴⁶ As the Commission previously has concluded with respect to other competitive telephone services, even customers with competitive alternatives need fair notice and information to choose a substitute service.⁴⁷ Therefore, in order to protect customers of interconnected VoIP service from interrupted service and its associated consequences, providers of interconnected VoIP service must notify all affected customers of their plans to discontinue, reduce, or impair service, and must provide affected customers with an opportunity to inform the Commission of resultant hardships.⁴⁸

15. By requiring interconnected VoIP providers to comply with the Commission's streamlined domestic discontinuance requirements applicable to non-dominant carriers, we have balanced the need to protect consumers with the goal set forth in section 230 of the Act of minimizing the regulation of the Internet and other interactive computer services.⁴⁹ As the Commission previously has

⁴³ See *Availability of Advanced Telecommunications Capability in the United States*, Fourth Report to Congress, 20 FCC Rcd 20540, 20573 (2004) ("[S]ubscribership to broadband services will increase in the future as new applications that require broadband access, such as VoIP, are introduced into the marketplace, and consumers become more aware of such applications.") (emphasis added); see also *infra* at note 46 (describing how abrupt discontinuance of service by one provider can affect consumer confidence in an entire industry).

⁴⁴ See 47 C.F.R. § 63.71. The Commission's rules pertaining to emergency discontinuances shall also apply to interconnected VoIP services. See 47 C.F.R. § 63.63.

⁴⁵ See AT&T Reply at 28; Comcast Comments at 9-10; Pac-West Comments at 26; Qwest Reply at 6; Verizon Comments at 5-6.

⁴⁶ See, e.g., *Competitive Carrier First Report and Order*, 85 FCC 2d at 34, para. 146; see also Andy Vuong, *No Dial Tone – Internet-based Phone Provider SunRocket's Abrupt Closure Leaves 200,000 Customers Hanging*, DENV. POST, July 20, 2007, at C3 (describing the harm to customers and the interconnected VoIP industry by SunRocket's abrupt discontinuance of service); Matthew Barakat, *VoIP Provider Shuts Down*, AP Newswires 18:58:55, July 18, 2007 (similar).

⁴⁷ See *Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996*, CC Docket No. 97-11, Report and Order, 14 FCC Rcd 11364, 11380, para. 30 (1999); see also, e.g., CWA Comments at 23; Frontier/Citizens Comments at 4-6; Massachusetts Attorney General Reply at 2; New Jersey Ratepayer Advocate Reply at 23; New York Attorney General Comments at 13; Pennsylvania Commission Reply at 8-9; cf. Utah Commission Comments at 6.

⁴⁸ The Commission's rules do not provide an exhaustive list of what constitutes the discontinuance, reduction, or impairment of service. See 47 C.F.R. § 63.60(a) (defining "[d]iscontinuance, reduction, or impairment of service"). In the context of interconnected VoIP service, we find that a discontinuance, reduction, or impairment of service would include, but not be limited to, the conversion of an interconnected VoIP service to one that permits only inbound, but not outbound, calls to the PSTN – or one that permits only outbound, but not inbound, calls to the PSTN.

⁴⁹ We do not believe that our actions today are in conflict or otherwise inconsistent with any other provision of the Act. We acknowledge that section 230 of the Act provides that "[i]t is the policy of the United States – to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation." 47 U.S.C. § 230(b)(2). The Commission's discussion of section 230 in the *Vonage Order* acknowledged this policy and cautioned against the imposition of undue regulation by multiple (continued....)

found, section 63.71 of the Commission's rules strikes a good balance between the Commission's dual objectives of permitting ease of exit from competitive markets and ensuring that the public will be given a reasonable period of time to make other service arrangements.⁵⁰ We therefore disagree with commenters who argue that applying section 214 exit regulations to interconnected VoIP service will unduly deter market entry, distort the market, or depress investment in new technologies.⁵¹ On the contrary, as the Commission has stated previously, disparate treatment of entities providing the same or similar services is not in the public interest as it creates distortions in the marketplace that may harm consumers.⁵²

16. We amend the Commission's Part 63 domestic discontinuance rules to encompass interconnected VoIP service. Accordingly, before an interconnected VoIP provider may discontinue, reduce, or impair service, it must provide all affected customers with written notice⁵³ that includes the provider's name and address; the date of the planned service discontinuance, reduction, or impairment; the geographic areas where service will be affected; a brief description of the affected service; and the statement found in section 63.71(a)(5)(i) of the Commission's rules.⁵⁴ We recognize that because of the

(Continued from previous page) _____

jurisdictions, but was directed at "traditional common carrier economic regulations." *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order, 19 FCC Rcd 22404, 22426, para. 35 (2004) (*Vonage Order*); see also *VoIP 911 Order*, 20 FCC Rcd at 10262, n.95; *EPIC CPNI Order*, 22 FCC Rcd at 6957, n.188. We therefore find that our actions here are consistent with the Commission's previous decisions, and we do not believe that the congressional policy statement in section 230 of the Act precludes us from extending consumer protection obligations, like section 214 discontinuance obligations, to interconnected VoIP providers. See *supra* para. 3. We also note that the extension of discontinuance obligations to providers of interconnected VoIP services has no effect on the Commission's preemption determinations in the *Vonage Order*. See Level 3 Comments at v (arguing against unnecessary state regulation in light of the *Vonage Order*). But see Pennsylvania Commission Reply at 9 (stating that the Commission should not preempt state authority over facilities or those services that the Commission may classify as telecommunications or telecommunications service so long as that authority is not too oppressive, overly burdensome, or hampers the development of this technology); Utah Commission Comments at 5-6 (indicating that state regulation of consumer protection issues as they relate to IP-enabled services would be beneficial).

⁵⁰ See *Competitive Carrier First Report and Order*, 85 FCC 2d at 34, para. 147.

⁵¹ See AT&T Comments at 41; DJE Comments at 3 n.9; Verizon Comments at 5-6, 30; Qwest Reply at 6.

⁵² *WBIAS Order*, 20 FCC Rcd at 14865, para. 17 (creating a regulatory and analytical framework that is consistent across different platforms that supports competing services); see also CWA Comments at 24 (arguing that applying the same consumer protection obligations to interconnected VoIP providers ensures competitive neutrality); Frontier/Citizens Comments at 4-6 (consumer protection should be technology neutral). We do not find it necessary to impose different or reduced requirements on interconnected VoIP providers that may be small businesses. Notice of proposed service discontinuances is important for the protection of all interconnected VoIP service customers, including the customers of small businesses. Given the important consumer interests involved, and that the Commission's existing rules apply to traditional carriers that are small businesses and have not resulted in undue hardship to those carriers, we conclude that the imposition of these requirements on interconnected VoIP providers that may be small businesses is similarly appropriate.

⁵³ Typically, written notice by postal mail to the customer's billing address satisfies the Commission's notice requirements under section 63.71 of the Commission's rules.

⁵⁴ "The FCC will normally authorize this proposed discontinuance of service (or reduction or impairment) unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments as soon as possible, but no later than 15 days after the Commission releases public notice of the proposed discontinuance. Address them to the Federal Communications Commission, Wireline Competition Bureau, Competition Policy Division, Washington, DC 20554, and include in your comments a reference to the § 63.71 Application of (carrier's name). Comments should include specific information about the impact of this proposed (continued....)"

potentially portable nature of some interconnected VoIP services, there may be additional and/or alternative means of providing effective notice to customers of interconnected VoIP providers. As such, upon request, the Commission may authorize in advance another form of notice for good cause shown.⁵⁵

17. On or after the date it provides notice to its customers as specified above, the interconnected VoIP provider must file with the Commission an application for authorization of the planned discontinuance.⁵⁶ The application shall identify that the provider is an interconnected VoIP provider seeking to discontinue, reduce or impair interconnected VoIP services and shall include, in addition to the information set forth in the notice provided to affected customers, a caption, a brief description of the dates and methods of notice to all affected customers, and any other information the Commission may require. An interconnected VoIP provider shall also submit a copy of its application to the public utility commission and to the Governor of the State(s) in which it proposes to discontinue, reduce, or impair service, as well as to the Secretary of Defense.⁵⁷ The application to discontinue, reduce, or impair service shall be automatically granted on the 31st day after the Commission releases public notice of the application unless the Commission notifies the applicant that the grant will not be automatically effective.⁵⁸ Thus we believe that interconnected VoIP providers will be faced with discontinuance requirements that are no more burdensome than the reduced requirements that already apply to competitive carriers, and that their customers will be afforded a reasonable time to make alternative service arrangements in the event of a discontinuance, reduction, or impairment of service.

C. Implementation

18. Some of the rules we adopt in this Order are subject to approval by the Office of Management and Budget (OMB). Thus, while this Order itself will become effective 30 days after

(Continued from previous page) _____

discontinuance (or reduction or impairment) upon you or your company, including any inability to acquire reasonable substitute service.” 47 C.F.R. § 63.71(a)(5)(i).

⁵⁵ See 47 C.F.R. § 63.71(a).

⁵⁶ See *infra* Appendix B (amending section 63.60 to include interconnected VoIP providers under the discontinuance rules including section 63.71).

⁵⁷ In addition to providing existing customers with direct notice of a proposed discontinuance, providers seeking to discontinue, reduce or impair service to a community should copy the state public utility commissions and governors’ offices in the states where they no longer plan to offer services regardless of whether customers are currently subscribing to their service at the time of the application. See 47 U.S.C. § 214(b) (regarding notice to the states where a carrier’s discontinuance, reduction, or impairment of service is proposed). We believe this requirement will serve the public interest by, among other things, better enabling states to play an active role in customer notification efforts where circumstances warrant such involvement. We recognize that interconnected VoIP providers that offer service nationwide will need to notify every state PUC and governor’s office before discontinuing service altogether. We do not find this requirement to be unduly burdensome however. In particular, notice to the states pursuant to section 63.71(a) only requires providing state officials with a copy of the discontinuance application. We find this simple notice should adequately inform states of the impending loss of previously available services to their communities in a minimally burdensome manner – using the same procedures that apply to other non-dominant providers that plan to discontinue nationwide offerings. See, e.g., *Comments Invited on Application of MCI Communications Services, Inc. (Verizon) to Discontinue Domestic Telecommunications Services*, Public Notice, WC Docket No. 08-64, 23 FCC Rcd 7691 (2008) (discontinuing prepaid calling card service and providing an easily updated service list for copies to all 50 states, the District of Columbia and Puerto Rico).

⁵⁸ 47 C.F.R. § 63.71(c). We expect that providers of wholesale inputs will coordinate and continue to work with interconnected VoIP providers in the event that a discontinuance of service becomes necessary so that the discontinuance of service can occur in an orderly fashion consistent with this Order, the Commission’s rules, and the interest of customers.

publication in the Federal Register, the requirements herein to provide notice to customers, to file an application with the Commission, and to provide information to other governmental entities will not become effective until receipt of OMB approval, as required by the Paperwork Reduction Act.

IV. PROCEDURAL MATTERS

A. Regulatory Flexibility

19. As required by the Regulatory Flexibility Act, 5 U.S.C. § 604, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this Report and Order. The FRFA is set forth in Appendix C.

B. Paperwork Reduction Act

20. This Order contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we previously sought specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

21. In this Order, the Commission has assessed the effects of imposing section 214 service discontinuance obligations on interconnected VoIP providers, and finds that the information collection burden of doing so in regards to small business concerns will be minimal. Thus, we do not adopt a varied implementation schedule for these requirements.

C. Congressional Review Act

22. The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA).⁵⁹

D. Accessible Formats

23. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice) or 202-418-0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov; phone: 202-418-0530 or TTY: 202-418-0432.

V. ORDERING CLAUSES

24. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 4(j), 214, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i)-(j), 214, 303(r), that the Report and Order in WC Docket No. 04-36 IS ADOPTED and Part 63 of the Commission’s rules, 47 C.F.R. Part 63, IS AMENDED as set forth in Appendix B.

25. IT IS FURTHER ORDERED that, pursuant to sections 1.103(a) and 1.427(a) of the Commission’s rules, 47 C.F.R. §§ 1.103(a), 1.427(a), that this Report and Order SHALL BE EFFECTIVE 30 days after the publication of the Report and Order in the Federal Register. However, the

⁵⁹ See 5 U.S.C. § 801(a)(1)(A).

information collection requirements contained in the Report and Order will become effective following Office of Management and Budget (OMB) approval.

26. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

List of Commenters

<u>Comments</u>	<u>Abbreviation</u>
8X8, Inc.	8X8
AARP	AARP
ACN Communications Services, Inc.	ACN
Ad Hoc Telecommunications Users Committee	Ad Hoc
Alcatel North America	Alcatel
Alliance for Public Technology	APT
America's Rural Consortium	ARC
American Foundation for the Blind	AFB
American Public Communications Council	APCC
Amherst, Massachusetts Cable Advisory Committee	Amherst CAC
Arizona Corporation Commission	Arizona Commission
Arctic Slope Telephone Association Cooperative, Inc. Cellular Mobile Systems of St. Cloud, LLC d/b/a Cellular 2000 Comanche County Telephone, Inc. DeKalb Telephone Cooperative, Inc. d/b/a DTC Communications Grand River Mutual Telephone Corporation Interstate 35 Telephone Company KanOkla Telephone Association, Inc. Siskiyou Telephone Company Uintah Basin Telecommunications Association, Inc. Vermont Telephone Company, Inc. Wheat State Telephone, Inc.	Arctic Slope <i>et al.</i>
Association for Communications Technology Professionals in Higher Education	ACUTA
Association for Local Telecommunications Services	ALTS
Association of Public-Safety Communications Officials- International, Inc.	APCO
AT&T Corporation	AT&T
Attorney General of the State of New York	New York Attorney General
Avaya, Inc.	Avaya
BellSouth Corporation	BellSouth
Bend Broadband Cebridge Connections, Inc. Insight Communications Company, Inc. Susquehanna Communication	Bend Broadband <i>et al.</i>
Boulder Regional Emergency Telephone Service Authority	BRETSA
BT Americas Inc.	BTA
Cablevision Systems Corp.	Cablevision
Callipso Corporation	Callipso
Cbeyond Communications, LLC GlobalCom, Inc.	Cbeyond <i>et al.</i>

MPower Communications, Corp.	
CenturyTel, Inc.	CenturyTel
Charter Communications	Charter
Cheyenne River Sioux Tribe Telephone Authority	Cheyenne Telephone Authority
Cisco Systems, Inc.	Cisco
Citizens Utility Board	CUB
City and County of San Francisco	San Francisco
City of New York	New York City
Comcast Corporation	Comcast
Communication Service for the Deaf, Inc.	CSD
Communications Workers of America	CWA
CompTel/ASCENT	CompTel
Computer & Communications Industry Association	CCIA
Computing Technology Industry Association	CompTIA
Consumer Electronics Association	CEA
Covad Communications	Covad
Cox Communications, Inc.	Cox
CTIA-The Wireless Association	CTIA
Department of Homeland Security	DHS
DialPad Communication, Inc. ICG Communications, Inc. Qovia, Inc. VoicePulse, Inc.	Dialpad <i>et al.</i>
DJE Teleconsulting, LLC	DJE
Donald Clark Jackson	Jackson
EarthLink, Inc.	EarthLink
EDUCAUSE	EDUCAUSE
Electronic Frontier Foundation	EFF
Enterprise Communications Association	ECA
Federation for Economically Rational Utility Policy	FERUP
Francois D. Menard	Menard
Frontier and Citizens Telephone Companies	Frontier/Citizens
General Communications, Inc.	GCI
Global Crossing North America, Inc.	Global Crossing
GVNW Consulting, Inc.	GVNW
ICORE, Inc.	ICORE
IEEE-USA	IEEE-USA
Illinois Commerce Commission	Illinois Commerce Commission
Inclusive Technologies	Inclusive Technologies
Independent Telephone & Telecommunications Alliance	ITTA
Information Technology Association of America	ITAA
Information Technology Industry Council	ITIC
Interstate Telcom Consulting, Inc.	ITCI
Ionary Consulting	Ionary
Iowa Utilities Board	Iowa Commission
King County E911 Program	King County
Level 3 Communications LLC	Level 3
Lucent Technologies Inc.	Lucent Technologies
Maine Public Utilities Commissioners	Maine Commissioners

MCI	MCI
Microsoft Corporation	Microsoft
Minnesota Public Utilities Commission	Minnesota Commission
Montana Public Service Commission	Montana Commission
Motorola, Inc.	Motorola
National Association of Regulatory Utility Commission	NARUC
National Association of State Utility Consumer Advocates	NASUCA
National Association of Telecommunications Officers and Advisors National League of Cities National Association of Counties U.S. Conference of Mayors National Association of Towns and Townships Texas Coalition of Cities for Utility Issues Washington Association of Telecommunications Officers and Advisors Greater Metro Telecommunications Consortium Mr. Hood Cable Regulatory Commission Metropolitan Washington Council of Governments Rainier Communications Commission City of Philadelphia City of Tacoma, Washington Montgomery County, Maryland	NATOA <i>et al.</i>
National Cable & Telecommunications Association	NCTA
National Consumers League	NCL
National Emergency Number Association	NENA
National Exchange Carrier Association, Inc.	NECA
National Governors Association	NGA
National Grange	National Grange
National Telecommunications Cooperative Association	NTCA
Nebraska Public Service Commission	Nebraska Commission
Nebraska Rural Independent Companies	Nebraska Rural Independent Companies
Net2Phone, Inc.	Net2Phone
New Jersey Board of Public Utilities	New Jersey Commission
New Jersey Division of the Ratepayer Advocate	New Jersey Ratepayer Advocate
New York State Department of Public Service	New York Commission
NexVortex, Inc.	nexVortex
Nortel Networks	Nortel
Nuvio Corporation	Nuvio
Office of Advocacy, U.S. Small Business Administration	SBA
Office of the Attorney General of Texas	Texas Attorney General
Office of the People's Counsel for the District of Columbia	D.C. Counsel
Ohio Public Utilities Commission	Ohio PUC
Omnitor	Omnitor
Organization for the Promotion and Advancement of Small Telecommunications Companies	OPASTCO

Pac-West Telecomm, Inc.	Pac-West
People of the State of California and the California Public Utilities Commission	California Commission
Public Service Commission of the State of Missouri	Missouri Commission
Pulver.com	pulver.com
Qwest Communications International Inc.	Qwest
Rehabilitation Engineering Research Center on Telecommunications Access	RERCTA
Rural Independent Competitive Alliance	RICA
SBC Communications, Inc.	SBC
Self Help for Hard of Hearing People	SHHHP
Skype, Inc.	Skype
Sonic.net, Inc.	Sonic.net
SPI Solutions, Inc.	SPI Solutions
Spokane County 911 Communications	Spokane County 911
Sprint Corporation	Sprint
TCA, Inc. -- Telecom Consulting Associates	TCA
Telecommunications for the Deaf, Inc	TDI
Telecommunications Industry Association	TIA
Tellme Networks, Inc	Tellme Networks
Tennessee Regulatory Authority	TRA
Texas Coalition of Cities for Utility Issues	TCCFUI
Texas Commission on State Emergency Communications.	TCSEC
Texas Department of Information Resources	Texas DIR
Time Warner Inc.	Time Warner
Time Warner Telecom	TWTC
TracFone Wireless, Inc.	TracFone
UniPoint Enhanced Services Inc. d/b/a PointOne	PointOne
United States Conference of Catholic Bishops Alliance for Community Media Appalachian Peoples' Action Coalition Center for Digital Democracy Consumer Action Edgemont Neighborhood Coalition Migrant Legal Action Program	USCCB <i>et al.</i>
United States Department of Justice	DOJ
United States Telecom Association	USTA
United Telecom Council The United Power Line Council	UTC <i>et al.</i>
USA Datanet Corporation	USAD Datanet
Utah Division of Public Utilities	Utah Commission
Valor Telecommunications of Texas, L.P. and Iowa Telecommunications Services, Inc.	Valor <i>et al.</i>
VeriSign, Inc.	VeriSign
Verizon Telephone Company	Verizon
Vermont Public Service Board	Vermont
Virgin Mobile USA, LLC	Virgin Mobile
Virginia State Corporation Commission	Virginia Commission

Voice on the Net Coalition	VON Coalition
Vonage Holdings Corp	Vonage
Western Telecommunications Alliance	WTA
WilTel Communications, LLC	WilTel
Wisconsin Electric Power Company Wisconsin Gas	Wisconsin Electric <i>et al.</i>
Yellow Pages Integrated Media Association	YPIMA
Z-Tel Communications, Inc.	Z-Tel

Reply Comments

<u>Reply Comments</u>	<u>Abbreviation</u>
8X8, Inc.	8X8
Ad Hoc Telecom Manufacturer Coalition	Ad Hoc Telecom Manufacturers Coalition
Ad Hoc Telecommunications Users Committee	Ad Hoc
Adam D. Thierer, Director of Telecommunications Studies, Cato Institute	Thierer
Alcatel North America	Alcatel
Alliance for Public Technology et al.	APT <i>et al.</i>
American Cable Association	ACA
American Electric Power Service Corporation Duke Energy Corporation Xcel Energy Inc.	American Electric Power <i>et al.</i>
Association for Local Telecommunications Services	ALTS
AT&T Corp.	AT&T
Avaya Inc.	Avaya
BellSouth Corporation	BellSouth
Broadband Service Providers Association	BSPA
Cablevision Systems Corp.	Cablevision
Callipso Corporation	Callipso
Central Station Alarm Association	CSAA
Cingular Wireless LLC	Cingular
Cisco Systems, Inc.	Cisco
City and County of San Francisco	San Francisco
Comcast Corporation	Comcast
CompTel/Ascent	CompTel
Consumer Electronics Association	CEA
Consumer Federation of America Consumers Union	CFA <i>et al.</i>
Covad Communications	Covad
CTC Communications Corp.	CTS
CTIA-The Wireless Association	CTIA
Department of Defense	DoD
Donald Clark Jackson	Jackson
EarthLink, Inc.	EarthLink
Educause	Educause
Enterprise Communications Association	ECA
Ericsson Inc.	Ericsson

Florida Public Service Commission	Florida Commission
Francois D. Menard	Menard
General Communication (GCI)	GCI
Global Crossing North America, Inc.	Global Crossing
Independent Telephone & Telecommunications Alliance	ITTA
Information Technology Association of America	Information Technology Association of America
Intergovernmental Advisory Committee	IAC
Intrado Inc.	Intrado
Knology, Inc.	Knology
Level 3 Communications LLC	Level 3
Massachusetts Office of the Attorney General	Massachusetts Attorney General
MCI	MCI
Montana Public Service Commission	Montana Commission
Motorola, Inc.	Motorola
National Association of State Utility Consumer Advocates	NASUCA
National Association of Telecommunications Officers and Advisors National League of Cities National Association of Counties U.S. Conference of Mayors National Association of Towns and Townships Texas Coalition of Cities for Utility Issues Washington Association of Telecommunications Officers and Advisors Greater Metro Telecommunications Consortium Mr. Hood Cable Regulatory Commission Metropolitan Washington Council of Governments Rainier Communications Commission City of Philadelphia City of Tacoma, Washington Montgomery County, Maryland	NATOA <i>et al.</i>
National Cable & Telecommunications Association	NCTA
National Emergency Number Association	NENA
National Exchange Carrier Association, Inc.	NECA
Nebraska Public Service Commission	Nebraska Commission
Nebraska Rural Independent Companies	Nebraska Rural Independent Companies
Net2Phone, Inc.	Net2Phone
New Jersey Division of the Ratepayer Advocate	New Jersey Ratepayer Advocate
New York State Department of Public Service	New York Commission
Nextel Communications, Inc.	Nextel
Nuvio Corporation	Nuvio
Office of the People's Counsel for the District of Columbia	D.C. Counsel
Organization for the Promotion and Advancement of Small Telecommunications Companies	OPASTCO
Pac-West Telecomm, Inc.	Pac-West
Pennsylvania Public Utility Commission	Pennsylvania Commission

Public Service Commission of Wisconsin	Wisconsin Commission
Qwest Communications International Inc.	Qwest
Regulatory Studies Program (RSP) of the Mercatus Center at George Mason University	Mercatus Center
Rehabilitation Engineering Research Center on Telecommunications Access	RERCTA
RNKL, Inc. d/b/a RNK Telecom	RNK
Rural Independent Competitive Alliance	RICA
SBC Communications Inc.	SBC
Skype, Inc.	Skype
Southern Communications Services, Inc. d/b/a Southern LINC	Southern LINC
Sprint Corporation	Sprint
Telecommunications Industry Association	TIA
Tellme Networks, Inc.	Tellme Networks
Texas Statewide Telephone Cooperative, Inc.	Texas Statewide Telephone Cooperative
Time Warner Telecom, Inc.	TWTC
T-Mobile USA, Inc.	T-Mobile
TracFone Wireless, Inc.	TracFone
United States Conference of Catholic Bishops Alliance for Community Media Appalachian Peoples' Action Coalition Center for Digital Democracy Consumer Action Edgemont Neighborhood Coalition Migrant Legal Action Program	USCCB <i>et al.</i>
United States Department of Justice	DOJ
United States Telecom Association	USTA
USA Datanet Corporation	USA Datanet
Utah Division of Public Utilities	Utah Commission
VeriSign, Inc.	VeriSign
Verizon Telephone Companies	Verizon
Voice on the Net Coalition	VON Coalition
Wisconsin Department of Public Instruction	Wisconsin Department of Public Instruction

APPENDIX B**Final Rules**

Part 63 of Title 47 of the Code of Federal Regulations is amended to read as follows:

1. Section 63.60 is amended by redesignating paragraph (d) as paragraph (g); redesignating paragraph (c) as paragraph (e); redesignating paragraphs (a) and (b) as paragraphs (b) and (c), respectively; and adding paragraphs (a), (b)(3), (d), and (f) to read as follows:

(a) For the purposes of sections 63.60 through 63.90 of these rules, the term “carrier,” when used to refer either to all telecommunications carriers or more specifically to non-dominant telecommunications carriers, shall include interconnected VoIP providers.

* * * * *

(b) * * *

(3) The conversion of an interconnected VoIP service to a service that permits users to receive calls that originate on the public switched telephone network but not terminate calls to the public switched telephone network, or the converse.

* * * * *

(d) The term “interconnected VoIP provider” is an entity that provides interconnected VoIP service as that term is defined in section 9.3 of these rules.

* * * * *

(f) For the purposes of sections 63.60 through 63.90 of these rules, the term “service,” when used to refer to a real-time, two-way voice communications service, shall include interconnected VoIP service as that term is defined in section 9.3 of these rules but shall not include any interconnected VoIP service that is a “mobile service” as defined in section 20.3 of these rules.

* * * * *

APPENDIX C

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *IP-Enabled Services Notice* in WC Docket 04-36.² The Commission sought written public comment on the proposals in the Notice, including comment on the IRFA.³ We received comments specifically directed toward the IRFA from three commenters in WC Docket No. 04-36. These comments are discussed below. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.⁴

A. Need for, and Objectives of, the Rules

2. This *Report and Order (Order)* takes a series of steps designed to ensure that consumers of interconnected Voice over Internet Protocol (VoIP) are afforded appropriate consumer protection measures consistent with the Communications Act of 1934, as amended (the Act). Today's telecommunications marketplace is one of rapidly changing technology, capability, and services. Since the Commission first described IP-enabled services nearly five years ago, the American public has embraced them, resulting in the widespread adoption of mass market interconnected VoIP and broadband services by millions of consumers for voice, video, and Internet communications. Consumers increasingly use interconnected VoIP service as a replacement for traditional voice service, and as interconnected VoIP service improves and proliferates, consumers' expectations for this type of service trend toward their expectations for other telephone services.⁵

3. This *Order* extends to providers of interconnected VoIP service the discontinuance obligations that apply to domestic non-dominant telecommunications carriers under section 214 of the Act. Consequently, before an interconnected VoIP provider may discontinue service, it must comply with the streamlined discontinuance requirements under Part 63 of the Commission's rules, including the requirements to provide written notice to all affected customers, notify relevant state authorities, and file an application for authorization of the planned discontinuance with the Commission.⁶

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-12, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, 4917, para. 91 & Appendix A (2004) (*IP-Enabled Services Notice*).

³ See *IP-Enabled Services Notice*, 19 FCC Rcd at 4917, para. 91 & Appendix A.

⁴ See 5 U.S.C. § 604.

⁵ See, e.g., *Order*, *supra* para. 1; U.S. VoIP Research Service, TeleGeography Research, at 2 (noting that the United States had 11.8 million VoIP subscribers in mid-2007), available at <http://www.telegeography.com/products/voip/index.php> (last visited May 13, 2009); JR, *US has overtaken Japan in retail VoIP subscriber numbers*, available at http://www.ilocus.com/2008/03/us_has_overtaken_japan_in_reta.html (last visited May 13, 2009) (noting that the United States had 16.1 million retail VoIP subscribers as of the fourth quarter of 2007).

⁶ See *Order*, *supra* paras. 14-17.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. In this section, we respond to comments filed in response to the IRFA.⁷ To the extent we received comments raising general small business concerns during these proceedings, those comments are discussed in the *Order*.

5. The Small Business Administration (SBA) comments that the Commission's *IP-Enabled Services Notice* does not contain concrete proposals and is more akin to an advance notice of proposed rulemaking or a notice of inquiry.⁸ We disagree with the SBA and Menard that the Commission should postpone acting in this proceeding, thereby postponing extending the application of the section 214 service discontinuance obligations to interconnected VoIP services. According to SBA and Menard, the Commission instead should reevaluate the economic impact and the compliance burdens on small entities and issue a further notice of proposed rulemaking in conjunction with a supplemental IRFA identifying and analyzing the economic impacts on small entities and less burdensome alternatives.⁹ We believe these additional steps suggested by SBA and Menard are unnecessary because small entities already have received sufficient notice of the issues addressed in today's *Order*,¹⁰ and because the Commission has considered the economic impact on small entities and the feasibility of alternative approaches to minimize the burdens imposed on those entities.¹¹

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

6. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.¹² The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."¹³ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.¹⁴ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹⁵

⁷ See SBA Comments, WC Docket No. 04-36 (filed May 28, 2004); Menard Comments, WC Docket No. 04-36 (filed May 28, 2004); Menard Reply, WC Docket No. 04-36 (filed July 15, 2004).

⁸ See SBA Comments at 1.

⁹ See SBA Comments at 2, 4, 6; Menard Comments; Menard Reply at 4.

¹⁰ The *IP-Enabled Services Notice* specifically sought comment on whether to extend consumer protections afforded in the Act to subscribers of VoIP or other IP-enabled services. See *IP-Enabled Services Notice*, 19 FCC Rcd at 4910-11, paras. 71-72. The Commission published a summary of that notice in the Federal Register. See *Regulatory Requirements for IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 69 FR 16193 (Mar. 29, 2004). We note that a number of small entities submitted comments in this proceeding. See *supra* Appendix A.

¹¹ See, e.g., *Order*, *supra* note 52.

¹² 5 U.S.C. §§ 603(b)(3), 604(a)(3).

¹³ 5 U.S.C. § 601(6).

¹⁴ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such terms which are appropriate to the activities of the agency and publishes such definitions(s) in the Federal Register."

¹⁵ 15 U.S.C. § 632.